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Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, submitted in accordance with General Assembly resolution 59/192 and Commission on Human Rights resolution 2005/67.

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Summary

In this her fifth annual report to the General Assembly, the Special Representative of the Secretary-General on the situation of human rights defenders describes how human rights defenders fulfil a fundamental role in the preservation and restoration of peace and security and argues that, to be effective, international peace and security strategies must give particular attention to protecting the role and situation of human rights defenders.

The principal concerns and recommendations of the Security Council and the Commission on Human Rights, with respect to peace and security and human rights problems are dealt with to a great extent by human rights defenders, without whose action neither the Council nor the Commission would be as well informed of emerging problems; without the work of defenders, the calls for action by the Council and the Commission in their resolutions would be inadequately addressed, and may be more likely to fail.

Through their work defenders provide early warning of emerging problems, including of gross human rights violations, and can help to prevent problems from deteriorating further. Defenders are active in situations where peace and security has already collapsed, such as in armed conflicts, helping to protect the lives of civilians caught in conflict and, through their presence and activities, preventing violations. In many instances it is their constant monitoring that brings to light deviations from international human rights and humanitarian law by parties to a conflict. Allowing the international community to take action to save civilian lives or prevent gross violations of human rights. Human rights defenders make significant contributions to ending conflict and to peacebuilding by strengthening the rule of law, questioning impunity for past and ongoing violations, addressing the human rights factors that caused the conflict, and by calling for and supporting the establishment of democratic principles and good governance.

Despite human rights defenders' fundamental role, and sometimes because of it, they are themselves victims of killings, disappearances, torture, arbitrary arrest and detention, harassment and intimidation. They have also been prevented from gaining access to places, people and information relevant to their work. When defenders are prevented from conducting their work, the peace and security and related human rights objectives of the United Nations are much less likely to be attained. In these circumstances actual armed conflict is more likely to emerge and to continue for longer periods, with all the accompanying human rights violations and human suffering that this entails.

The report contains recommendations addressed to States individually and as members of the Security Council and the Commission on Human Rights, and to the United Nations Secretariat and specialized agencies. In particular, when considering the United Nations reform process and proposals for a reformed Commission on Human Rights and a Peacebuilding Commission, Member States should recognize the essential role of human rights defenders. Specifically, the Special Representative calls for due consideration to be given to ensuring that human rights defenders have adequate access to a reformed Commission on Human Rights. She urges the Council and the Commission to react more expeditiously to information on evolving peace and security and related human rights concerns reported by human rights defenders,

and to consider ways in which such information can be received by them in a timely manner. The Special Representative also strongly recommends that the United Nations Secretariat and specialized agencies consider and address their responsibility towards human rights defenders and respond to information on urgent human rights concerns, or to channel such information to the competent United Nations bodies.

The Special Representative recommends that the Office of the High Commissioner consider ways in which it can facilitate her recommendations, and recommends that the Security Council and the Commission on Human Rights give much greater attention to protecting human rights defenders. When defenders are silenced and prevented from undertaking their activities, the goals of protecting peace, security and human rights are seriously undermined.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani

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I. Introduction

1. The present report is the fifth annual report submitted to the General Assembly by the Special Representative of the Secretary-General on the situation of human rights defenders. It is submitted pursuant to Commission on Human Rights resolution 2005/67 and General Assembly resolution 56/163. In the report, the Special Representative describes the role of human rights defenders in addressing peace and security through their human rights work and argues that, to be effective, international peace and security strategies must give particular attention to protecting the role and situation of human rights defenders and to taking account of their work in all initiatives taken in this context.

2. The preservation of peace and security is a core objective in the Charter of the United Nations. The implementation and respect of fundamental human rights can be described as a second core objective of the United Nations, as initially reflected in the Charter and then laid down more precisely in the Universal Declaration of Human Rights. The intervening years have eloquently illustrated how closely linked these two objectives are: human rights violations are almost always the underlying cause, or the consequence, of a deterioration in peace and security. Bringing an end to armed conflict and restoring peace and security typically require progress in addressing ongoing human rights violations and ending impunity for past violations. Most recently, the Secretary-General in his report "In larger freedom ..." (A/59/2005) drew clear parallels between peace and security and human rights, calling for more effective action to protect human rights in the context of threats to peace and security.

3. In spite of their essential role, the protection of human rights defenders and their work is still not adequately emphasized within the United Nations system. As a result, efforts by States and United Nations bodies to protect peace and security have a lesser impact on the prevailing conditions, allowing for a greater risk of conflicts emerging from these conditions or continuing for longer periods.

4. The following sections of this report call attention to the serious obstacles that defenders are confronted with when trying to fulfil their role in preserving or restoring peace and promoting human rights. The report gives multiple examples of how the work of human rights defenders contributes to achieving the objectives of resolutions adopted by the Security Council and the Commission on Human Rights. The report ends with a concluding analysis and a series of recommendations addressed to States individually and as members of the Council and the Commission, and to the United Nations Secretariat and specialized agencies.

II. The contribution of human rights defenders to preserving peace and security

5. Patterns in Security Council and Commission on Human Rights resolutions that have identified peace and security concerns in specific countries reflect Member States' repeated preoccupation with a consistently similar set of factors. In the most general terms, the Council and the Commission's prime concerns are to restore peace, security and respect for human rights as quickly as possible, and to preserve life in the interim while a situation stabilizes. To this end, resolutions

identify the main threats to peace and security, groups of people who are most at risk as a result, and the main actions needed to protect these vulnerable persons and to re-establish peace, security and respect for human rights.

6. While, of course, situations differ from country to country and over time, the most common actions identified by the Council and the Commission in their resolutions can be divided into three, closely related categories. Firstly, resolutions call for a re-establishment of the rule of law, including respect for international human rights and humanitarian law and the ending of impunity. In this regard, resolutions often specify particular concerns, such as the killing of civilians, torture, or arbitrary arrest and detention. Secondly, resolutions call for the protection of civilians, humanitarian access and assistance to vulnerable populations, and frequently also call for special protections for displaced persons, women, children and other groups. Thirdly, and where relevant, resolutions call for peace negotiations and for the restoration or establishment of democratic institutions, principles and processes, such as elections.

7. Resolutions are addressed first and foremost to the Governments of the State (or States) where the peace, security and human rights concerns exist. Resolutions also call for action by the United Nations Secretariat and specialized agencies and sometimes by regional intergovernmental bodies. These resolutions are meant to serve as instructions, advice or guidelines to States and intergovernmental actors on the actions to be taken and the standards to be met.

8. It is more than likely that human rights defenders are already engaged with the issues, problems and solutions to the human rights or security crises addressed in these resolutions. The Special Representative considers that without the action of human rights defenders neither the Council nor the Commission would be as well informed of emerging peace and security or human rights problems. She considers, further, that without the work of defenders the calls for action by the Council and the Commission in their resolutions would be inadequately addressed, and may be more likely to fail.

A. Defenders and early warning

9. Regular monitoring and reporting on human rights situations by human rights defenders identifies and calls attention to threats and changes in peace and security before they deteriorate into armed conflict, providing the Security Council and the Commission on Human Rights with opportunities to take preventive action. For example, human rights defenders in Rwanda documented systematic human rights abuses against ethnic minority populations within the country for many years before the 1994 genocide. A number of new human rights organizations were established at the beginning of the decade, including, the Rwandan Association for the Defense of Human Rights, the Association of Volunteers of Peace, the Rwandan Association for the Defense of Human Rights and Public Liberties, and Kanyarwanda, and in 1992 Human Rights Watch included Rwanda as one of the countries on which its 1992 annual report focused. During the early 1990s, these human rights organizations and others recorded massacres and hundreds of individual killings, disappearances, torture and beatings and thousands of arrests, targeting primarily the Tutsi population, Hutu sympathizers or the Government's political opposition. They also

reported on widespread violations of the right of ethnic communities to freedom of movement, the right to education and labour rights. Human rights non-governmental organizations (NGOs) also reported on censorship of the press whenever efforts were made to report on violations or on corruption in Government.

10. Collectively, these violations were a clear indicator of the massive breakdown in peace and security that would follow. The documentation and reporting by national and international human rights NGOs encouraged the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Rwanda in 1993, and in his subsequent report to the Commission he warned that genocide might occur there (see E/CN.4/1994/7/Add.1). The Special Rapporteur's conclusions were prompted partly by the significant information presented to him by human rights defenders. If the reports of defenders and that of the Special Rapporteur had been acted upon, it is arguable that steps could have been taken to prevent the Rwandan genocide and the accompanied movement of roughly 3 million refugees and internally displaced persons which marked the beginning of a dramatic worsening of peace and security in the Great Lakes Region of Africa.

B. Defenders and armed conflict

11. Human rights are always increasingly at risk as peace and security begin to break down and a situation slides towards and into armed conflict. Defenders conduct missions into barely accessible regions of a country in conflict, interview victims and witnesses, conduct investigations, corroborate information, and then document and report on their findings. Their activities sometimes provide the only restraint on the behaviour of combatants and allow the international community to remain at least partially apprised of a changing situation.

12. According to some sources, armed conflict in the eastern regions of the Democratic Republic of the Congo is reported to have led to the deaths of 4 million people either from direct killings or from illness or malnutrition engendered by the context of armed conflict. In addition, the rights to education, to work, to family life, to housing and to health have all been violated on a massive scale. In spite of the high-risk environment, human rights defenders are extremely active both in the east and in the capital, Kinshasa. They investigate violations and their reports of the evolving situation have been used to inform the United Nations peacekeeping mission in the country, as well as other United Nations agencies.

13. In Afghanistan, Burundi, Iraq, the Democratic Republic of the Congo, the Sudan and other countries that are now experiencing or have experienced armed conflict in the past, both national and international humanitarian workers serve every single day as implementing partners for United Nations agencies. They deliver and distribute food, water, medication, clothing and other material assistance. They provide medical care and psychological support for victims of rape and other trauma. They help transport people when they are ready to return home. In internally displaced persons camps, and some refugee camps, displaced persons state categorically that the simple presence of these humanitarian workers provides them with a measure of physical protection from attacks. Through their different activities, human rights defenders help people to stay alive during periods of

conflict and they limit the extent of human rights violations among civilian populations.

14. There should be no hesitation in saying that without the work of human rights defenders, today, in countries where there is ongoing armed conflict, millions of people would be much more vulnerable to violations of their rights to life, physical integrity, liberty, food, health, adequate housing, education and many others, and the United Nations system would be much less well equipped to address the conflict.

C. Defenders and peacebuilding

15. The factors required for the restoration of peace and security are commonly identified in Security Council and Commission resolutions as including ending actual armed conflict, ending impunity, and re-establishing the rule of law and democratic principles. More specifically, resolutions have included references to the demobilization and reintegration of combatants, the voluntary return or resettlement of displaced persons, reconciliation between different population groups and the holding of free and fair elections. Implicit in any expectation of a lasting peace is that the causes of the initial conflict need to be addressed, such as discrimination against groups of a population or major social and economic inequality.

16. For example, the Security Council had expressed its concern with regard to peace and security in East Timor over a period of roughly 25 years. On 22 April 1976 the Council adopted resolution 389 (1976) on the situation in East Timor in which it recognized "the urgent need to bring to an end the continued situation of tension in East Timor" and referred notably to the "inalienable right of [its] people to self-determination". On 11 June 1999, the Council adopted resolution 1246 (1996) in which it noted with concern the assessment of the Secretary-General that the security situation in East Timor remained "extremely tense and volatile". In 1999, the United Nations organized a referendum through which the people of East Timor chose independence. The United Nations Secretariat was subsequently called upon to support East Timor through its transition to the independent State of Timor-Leste on 20 May 2002.

17. The long legacy of impunity for past human rights violations, the violence and destruction of infrastructure that followed the referendum, weak institutions, inadequate legislation and the sheer burden of establishing a new and independent State from its inception created an exceptionally challenging context for peacebuilding.

18. Human rights defenders have been active in Timor-Leste in addressing the core concerns of the United Nations. They have helped to strengthen Timor-Leste's legislation, lobbying the Government and advocating for early ratification of international human rights instruments and providing comments on the human rights implications of new legislation — such as the draft Penal Code — which will provide the foundation for the new country's legal system. In the first few months of independence, a coalition of Timorese NGOs published their assessment of the judicial system, expressing concern that inadequate training and resources were hampering the administration of justice and that without a properly functioning justice system true reconciliation based on respect for the rule of law and human rights could not be achieved. Defenders then identified specific weaknesses and

proposed workable solutions both to the Government and to the United Nations and international donors. With regard to impunity for violations over the past decades and during the referendum, defenders conducted workshops where civil society, victims and Government officials could discuss the advantages and disadvantages of future judicial options in an informed and open environment. Defenders have helped to articulate the concerns of past victims and have lobbied the Government, the United Nations and the wider international community to ensure that commitments to deliver justice are met. Defenders in Timor-Leste have worked closely with their Indonesian counterparts to lobby for prosecution of Indonesian officials thought to be responsible for violations in East Timor. They have monitored and reported on the ensuing judicial proceedings.

19. In Timor-Leste today there are NGOs working on development and on environmental issues, including oil and gas rights in the Timor Sea. Defenders have been providing input and commentary on the draft Petroleum Fund Act legislation which is designed to achieve accountability and transparency in the investment in and use of revenue generated from the State's petroleum reserves, which will be so crucial to its sustainable development. On 16 November 2004, the Security Council adopted resolution 1573 (2004) in which the Council recognized that "despite notable advances achieved in the last months, Timor-Leste has not yet reached the critical threshold of self-sufficiency ... in key areas such as public administration, law enforcement and security," but also commended "the people and the Government of Timor-Leste for the peace and stability they have achieved in the country, as well as for their continuing efforts towards consolidating democracy and building State institutions." Human rights defenders have helped take Timor-Leste off the agenda of the Council and the Commission on Human Rights. Without their work it is much less certain that Timor-Leste would have seen a degree of progress that is promising. Any optimism concerning the completion of this transition is based as much on the visible efforts of the human rights community as on governmental initiatives. At the same time, it is human rights defenders who continue to monitor this progress and ensure that the growth of a culture of respect for human rights and democratic freedoms is not obscured by State conduct or social trends. In sharp contrast to other countries whose situation has been discussed in this report, the Special Representative has received no reports of violations against human rights defenders in Timor-Leste. While the Special Representative cannot confirm the degree to which the overall environment for defenders is more conducive in Timor-Leste, she has taken note of information indicating that authorities welcome the contribution of human rights defenders. This has allowed defenders to play a more active and effective role in the country's progress towards democracy, human rights and development, which strengthens prospects for sustainable peace.

20. In Angola, Liberia and Sierra Leone, human rights defenders have been involved in demobilization and reintegration of combatants. Disarming combatants and ensuring that they are reintegrated into society and given professional training and job opportunities are essential not only to preventing a resurgence of conflict but also to preventing former combatants from using violent crime as a means of earning a living. In some conflicts, children have been recruited as soldiers and their demobilization can require specialist expertise, some of which is contributed by human rights defenders through programmes they have initiated in this regard. Humanitarian NGOs have also been at the forefront of efforts to clear landmines in

Angola and Afghanistan, so that the land is safe to be used again. All of these activities are central to ending a conflict and are commonly carried out by human rights defenders working through national and international NGOs, and sometimes as implementing partners for United Nations agencies.

21. In Rwanda, the countries of the former Yugoslavia and Sierra Leone, defenders have been deeply involved in efforts to address impunity for human rights and humanitarian law violations committed during the conflicts. Monitoring and reporting by human rights defenders during an armed conflict has been at the basis of decisions to launch a process of judicial accountability at a conflict's close, as was the case with the establishment of the Special Court and the Truth and Reconciliation Commission in Sierra Leone. The work of defenders has proven of great support to the international tribunals for Rwanda and the former Yugoslavia.

22. In Burundi, the former Yugoslav Republic of Macedonia and Kosovo, defenders have provided human rights training for judges, lawyers and police officers. In 2003, defenders provided critical comments on draft legislation in the former Yugoslav Republic of Macedonia, seeking to ensure that the right to information and other standards were adequately met. Their efforts have strengthened the rule of law.

23. Setting up an election system and the holding of free and fair elections help to legitimize power-sharing arrangements defined under initial peace agreements and introduce accountability of Government. In Cambodia, defenders conducted campaigns to explain the future elections to the general population, describing democratic rights and how to exercise the right to vote. In the three years since the end of countrywide armed conflict in Angola, defenders have helped to register many people in preparation for elections expected in 2006.

24. Finally, successful peacebuilding requires that the human rights concerns that were among the initial causes of the conflict be addressed. Human rights defenders in Angola over the last three years have taken on new roles commensurate with the post-conflict and peacebuilding stage of the country. They examine corruption issues, land rights, housing rights and the rights of linguistic or regional minorities and they support freedom of expression, thereby strengthening transparency and democracy.

25. The Special Representative emphasizes that it is primarily the engagement of defenders with a range of activities that are central and absolutely necessary to peacebuilding that is relevant to this discussion. The impact and success of these activities in restoring, building or preserving peace and security vary in the different situations under discussion. Human rights defenders do not account for every aspect of progress, and they do not replace the State. However, their activities do contribute to progress and to achieving a successful transition.

III. Case studies

26. To illustrate further the essential contribution of human rights defenders in addressing peace, security and human rights concerns, the Special Representative has selected a few of the situations that have been considered by the Security Council or the Commission on Human Rights and which reflect different stages of

Member States' concern for peace, security and human rights. The case studies presented are of countries from which the Special Representative received information on the situation of human rights defenders and their activities that had direct relevance to the situations that became the subject of concern for the Council or the Commission.

A. The Darfur region of the Sudan

27. On 30 July 2004 the Security Council adopted resolution 1556 (2004) in which it noted "its grave concern at the ongoing humanitarian crisis and widespread human rights violations" in Darfur. Specifically, the Council expressed concern with regard to: acts of violence and violations of human rights and international humanitarian law; attacks on civilians; rape; acts of violence with an ethnic dimension; the situation of women and children; forced displacement; the situation and safe and voluntary return of internally displaced persons and refugees to their original homes as a key element in the ultimate resolution of the crisis in Darfur; impunity and the investigation of atrocities and prosecution of those responsible; problems of humanitarian assistance and access; disarmament of the Janjaweed militia; violations of the Ceasefire Agreement; and the need to reinitiate peace talks. The Council determined that "the situation in the Sudan constitutes a threat to international peace and security and to stability in the region".

28. The various points listed in the Council's resolution correspond with those factors in Darfur which led the Council to determine that the situation in the Sudan was a threat to international peace and security. They also represent those concerns that the Council considered needed to be most urgently addressed and the actions that needed to be taken to re-establish peace, security and respect for human rights. The Council acknowledged the importance of human rights monitoring by welcoming the work done by the High Commissioner for Human Rights to send human rights observers to the Sudan. Human rights defenders' work in the Sudan has addressed the heart of most of the concerns expressed by the Council and is thus fundamental to achieving the Council's objectives in Darfur. Some examples are provided in the paragraphs below.

29. **Informing and alerting the Security Council and the wider international community**. Human rights defenders had actively addressed the human rights situation in Darfur for some considerable time prior to the complete breakdown of peace and security in the three Darfur states and before the Council's attention had been formally drawn to the region. In July 2002, the Sudanese Organization against Torture (SOAT) published a press release in which it stated, "SOAT is gravely concerned about the worsening situation of human rights in Darfur province ... [involving] conflict ... leading to the destruction and depopulation of villages and considerable numbers of people displaced and lacking food security and shelter". Throughout 2002, 2003 and 2004 SOAT and other organizations reported on, inter alia, killings, arbitrary arrest and detention, torture, judicial rights abuses and land and environmental rights concerns, which were leading to disputes between different tribes. In November 2003 a forum of African human rights organizations adopted and published a "resolution on the armed conflict in Darfur", calling for action to address human rights abuses in the region. The drawing of the Security Council's attention to Darfur in July 2004 was to a considerable degree a reaction to

the monitoring, investigation and reporting by human rights defenders, who had already raised all of the concerns listed by the Council in its resolution. It is fair to say that the work of the defenders was critical in defining the crisis and calling the attention of the international community to the situation developing in the Darfur region of the Sudan.

30. **Monitoring and reporting on violations.** Human rights defenders continue to collect information on ongoing human rights and humanitarian law violations. They document attacks on villages and individual killings, interviewing witnesses, obtaining the names of victims and alleged perpetrators. SOAT, the AMAL Centre, the Sudanese Development Organization and a number of other organizations and individual defenders have, for example, documented the many rapes reported in the vicinity of Darfur villages and IDP camps. They have provided medical and counseling assistance to the victims and are urging authorities to investigate individual cases. Other defenders have reportedly identified and provided support to internally displaced persons who are arrested and detained for raising concerns about violations or for their involvement with gathering vital information to facilitate or assist humanitarian activities in camps.

31. **Justice and ending impunity.** On 18 September 2004, the Security Council adopted resolution 1564 (2004) in which it requested that the Secretary-General establish an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Darfur and to determine whether acts of genocide had occurred. The Council specifically requested that the commission investigate "reports" of violations. On 31 March 2005 the Security Council adopted resolution 1593 (2005) in which it took note of the report of the Commission of Inquiry (S/2005/60) and referred the situation in Darfur to the International Criminal Court. Many of the "reports" referred to in resolution 1564 (2005) contained information gathered and published by human rights defenders. It would, therefore, not be inaccurate to say that defenders' work contributed directly to the situation in Darfur being transmitted to the Court. The importance of the presence of human rights observers is reflected in the Council's welcoming the improved access of international human rights non-government organizations to the troubled region. Not the least of the advantages of the presence of these NGOs is the availability of multiple sources of information. In addition to influencing the securing of international justice, defenders in Darfur receive victims of torture and beatings, investigate alleged violations, help victims to obtain medical and other assistance, and provide legal representation to ensure that police and judicial authorities provide an adequate response. Their work very probably also has a preventive effect. By continuing to report in detail on individual cases of violations and lobbying authorities to take action, defenders continue to contribute towards addressing impunity.

32. **Sustaining life; humanitarian access and assistance.** Defenders negotiate humanitarian access and deliver humanitarian assistance to the estimated 3.2 million refugees and internally displaced persons resulting from the Darfur situation. Humanitarian NGOs deliver both food and non-food items to IDP camps and provide clean water, health services and school facilities for children. IDPs and refugee populations currently have no alternative forms of support; the work of human rights defenders is thus essential to preserving the lives of these displaced persons.

33. **Protection and the voluntary return of displaced persons.** IDPs in the various Darfur camps consider that they are physically safer when NGO staff are present in the camps. A number of national and international NGOs maintain offices, clinics or warehouses in the camps, with their staff travelling into the camps each morning to provide humanitarian assistance. Attacks and arrests of people living in the camps tend to take place largely at night when NGO staff are not present. The monitoring by defenders of the human rights situation across Darfur and in rural areas is useful for displaced persons in camps as it provides them with information that helps them to assess whether it is safe to return to their homes. The monitoring and reporting of human rights defenders assures a minimum of accountability and has a preventive impact.

34. Human rights defenders continue to address critical human rights concerns that are relevant to what are believed to be the causes of the conflict and that need to be addressed for any lasting restoration of peace and security in the region. They are making an enormous contribution in limiting the impact of the conflict upon the civilian population. This contribution has been at great cost to their personal security and liberty. Journalists, lawyers, peace activists, humanitarian workers and members of non-governmental organizations have been targeted by closure of organizations, arbitrary arrests and detention, torture and ill-treatment, particularly at the hands of security and intelligence agencies of the State. In her report to the sixtieth session of the Commission on Human Rights (see E/CN.4/2004/94 and E/CN.4/2004/94/Add.3), the Special Representative expressed continuing and serious apprehensions regarding the security of human rights defenders, in particular peace activists in Darfur.

35. She welcomes the Security Council's call on the Government of the Sudan in resolution 1556 (2004) to establish credible security conditions for the protection of "humanitarian actors". She regrets, however, that the resolution does not address the serious issue of violations of the rights and imminent threats to the security of a large body of human rights defenders conducting activities in the context of the conflict in Darfur.

B. Nepal

36. The Commission on Human Rights in its resolution 2005/78 expressed deep concern about the situation of human rights in Nepal in the context of the ongoing conflict and focusing on four areas requiring action. Firstly, the resolution cited concern with regard to specific human rights violations, including, unlawful killings, disappearances, torture, sexual violence, forced displacement, mass abduction, extortion, forced recruitment and forced labour, arbitrary arrests, censorship, freedom of opinion and expression, and freedom of association. Secondly, the Commission expressed concern with regard to the situation of categories of persons, including civilians in general, women and children in particular, political leaders and activists, human rights defenders, internally displaced persons, refugees and journalists, as well as access of humanitarian organizations to those in need of assistance. Thirdly, the resolution focused on the rule of law and reflected concern as to respect for international humanitarian law, whether anti-terrorism and security laws and measures were in accordance with relevant international standards, impunity, and the independence and effectiveness

of the judiciary. And fourthly, the Commission called for peace negotiations, national dialogue with political parties, the restoration of multiparty democratic institutions, and the holding of free and fair elections.

37. As in the case of the Sudan, the Commission outlined priority concerns and actions that need to be taken for the restoration of respect for human rights. Human rights defenders are making major contributions to addressing all of these concerns; in some areas there has been almost no remedial action by any other actor. The following paragraphs provide a number of examples.

38. **Alerting and keeping Member States informed.** The work of human rights defenders was to a great degree at the basis of the Commission's decision to adopt such a broad resolution on Nepal. The neutrality and objectivity of their reporting on the situation in Nepal allowed the Commission to identify and condemn also those violations committed by the armed opposition group, a non-State party to the conflict. Information on a majority of the unprecedented number of 80 cases submitted to the Commission by the special procedures in 2005 was initially gathered and communicated to them by human rights defenders working in Nepal and internationally. This large body of cases provided the Commission with valuable information in assessing the human rights situation in Nepal and determining its course of action.

39. **Ongoing human rights violations**. The Asian Legal Resource Centre published a report in April 2005 describing practices of extrajudicial killings, forced disappearances and torture by the Nepali security forces. Other human rights defenders reported on the destruction of homes in Kapilabastu district in March 2005. Collectively, defenders have monitored, investigated and reported on all of the different violations cited by the Commission in resolution 2005/78. They have attempted to mitigate the impact of violations by, for example, visiting the victims of arbitrary detention and providing legal representation to the victims of torture. They have reported widely on all these violations, and have effectively opposed attempts to limit freedom of expression.

40. **Humanitarian assistance and protection.** Human rights defenders have been more active than any other actor in identifying IDPs displaced by the conflict in towns and rural communities and in providing them with food, clothing and housing. The Informal Sector Service Centre, an NGO, used its 2004 human rights yearbook to report on the situation of internally displaced persons, among others. In Biratnagar, in southern Nepal, a coalition of human rights NGOs works closely with the United Nations to coordinate assistance to internally displaced persons. The focus on IDPs by defenders helped to encourage a joint United Nations mission and a visit by the Representative of the Secretary-General on the human rights of internally displaced persons to Nepal in April 2005

41. **The law, impunity and the judiciary.** Defenders have struggled in Nepal to support the rule of law in multiple ways. They have publicized cases in which state of emergency legislation and anti-terrorism legislation have been abused in violation of human rights; they lobbied for the ending of the state of emergency and for the repeal of legislation and measures that are in contradiction with Nepal's human rights obligations; they have drawn cases to the attention of the judiciary and then monitored the fairness of judicial proceedings. For example, the Advocacy Forum, a Nepali NGO, is working for the identification and removal of weaknesses in the

judicial process that affect the respect for human rights, including failures to respect habeas corpus requirements and lack of access by detainees to legal counsel.

42. **Peace and democracy.** The Commission indicated its strong desire for the restoration multiparty democracy in Nepal, and for the holding of free and fair elections and, ultimately, peace. Defenders are contributing to these aims by working to ensure that political activists are not detained and free to function as a genuine political opposition in a democratic State. Defenders have challenged the introduction of legislation and measures that had been used by the State to arrest political opposition leaders and to prevent the public gathering and the organizing of their political supporters. Defenders have participated in public demonstrations in favour of peace and democracy.

43. The human rights situation in Nepal remains of major concern, and the conflict continues. However, human rights defenders have, at a minimum, succeeded in alerting the international community to a deteriorating peace, security and human rights situation. Their activities are not only directed towards ending the conflict, but in many ways are building the means for restoring and sustaining democracy, the most significant of which is an informed population capable of making the right choices based on support and respect for democratic practices.

44. The endangered situation of human rights defenders, including journalists and peace activists, is reflected in the Commission's concern for their physical integrity and safety. In resolution 2005/78 it called upon the Government of Nepal to immediately release all detained human rights defenders and to take appropriate measures to ensure their protection. The Special Representative welcomes the resolution of the Commission and recalls her report to the Assembly at its fifty-eighth session (A/58/380) in which she reported, inter alia, on the role and situation of human rights defenders under states of emergency. In that report she recommended measures for the security of human rights defenders and for safeguarding their right to monitor and report on emergency laws, measures and practices. She hopes that the Government of Nepal and international actors assisting the Government in implementing resolution 2005/78 will take note of those recommendations. She hopes, in particular, that the Office of the High Commissioner for Human Rights in Nepal in giving due attention to the situation of defenders will address the issues raised in that report through its programmes and activities.

C. Guatemala

45. For many years Member States have been concerned about the situation of peace and security in Guatemala in the context of the internal armed conflict that lasted from 1960 to 1996. The signing of the Peace Accords between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca in December 1996 marked the formal end to the internal armed conflict. On 20 January 1997 the Security Council adopted its last resolution 1094 (1997) on peace and security in Guatemala, in which it authorized the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala to monitor the implementation of the

Peace Accords. The Commission adopted its last resolution (1998/22) on Guatemala in 1998, relating to assistance in the field of human rights.

46. Continuing indigenous and land rights concerns, impunity for past violations, full implementation of the human rights aspects of the peace agreements, the continuing existence of illegal and clandestine groups, and maintaining the presence and commitment of the international community are all fundamental factors in building and securing peace in Guatemala. Human rights defenders working in post-conflict Guatemala agree that many of the grievances at the root of the conflict are still present to some degree and are manifested, for example, in indigenous and land rights concerns. Through their monitoring, investigations, reporting, advocacy and other activities, human rights defenders are contributing to addressing the Security Council's concerns to the extent that, without the work of human rights defenders, progress in assuring peace in some areas would be much less secure.

47. **Recognition of the current human rights situation.** Effective post-conflict reconciliation and reconstruction requires the Government and other actors involved to have a thorough knowledge of existing problems and potential obstacles. Human rights defenders' continuing monitoring and reporting on the situation of human rights in Guatemala has maintained awareness among domestic, regional and international actors of the ongoing human rights situation in the country.

48. **Root causes of the conflict and implementation of the peace accords.** In the hope of creating an independent and legally binding Land Registry, indigenous and campesino organizations have been active in submitting draft legislation proposals and ensuring that the related commitments contained in the 1996 Peace Accords are realized. Human rights policy think tanks and research institutions have been instrumental in presenting proposals for legal reform to relevant national bodies. For instance, the Plataforma Agraria has developed a proposal for rural development ("*Abriendo Brecha. Propuesta de Plataforma para el desarrollo Rural*") and jointly with the executive, has drawn up a plan of action ("*Plan de Atención Social a la Crisis Cafetalera y Conflictividad Agraria y Laboral*"), which was approved by Congress in December 2002.

49. **Illegal and clandestine groups within the State.** Human rights organizations within the Movimiento Nacional de Derechos Humanos were involved in drawing up the initial recommendation for the creation of a Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatus — CICIACS). The CICIACS proposal represented a major breakthrough in securing State recognition that clandestine groups had infiltrated the State apparatus, threatened the rule of law, and needed to be dismantled. Human rights defenders were present at each step of the process, and were central to keeping the project on track. Different sectors of civil society have been involved in campaigns in favour of CICIACS. For instance: the Confederación de Religiosos de Guatemala gathered signatures requesting approval of CICIACS by Congress; Alianza Contra la Impunidad disseminated material informing the population about the nature and purpose of the proposal. Although a judgement by the Constitutional Court in August 2004 declared elements of the CICIACS agreement unconstitutional, human rights defenders have continued to urge the Government to make progress on the CICIACS initiative or to propose a suitable alternative mechanism.

50. **Justice, impunity and reconciliation.** A number of human rights organizations have helped to bring violations of humanitarian law to trial by providing victims with legal advice, and helping them with fund-raising and other forms of support. Human rights defenders have been instrumental in bringing key cases to the attention of regional and international human rights mechanisms. For example, in April 2004, the Inter-American Court of Human Rights ordered the Government to assume public responsibility and apologize for a massacre at Plan de Sánchez in July 1982. Human rights defenders have also strongly supported and actively promoted the establishment of a new office of the United Nations High Commissioner for Human Rights in Guatemala.

51. The above examples are just a small sample of defenders' contributions in Guatemala. With a well-advanced peace process and a functioning judiciary, human rights defenders in Guatemala have focused particular attention on ensuring that the human rights aspects of the peace agreements are implemented and on addressing impunity by taking cases of violations to the courts. Their work in these two areas alone is central to the peace process and to the objectives of the Security Council and the Commission on Human Rights. As in other countries, the neutral role of defenders ensures the participation of an essential actor in monitoring State and non-State actors' compliance with their obligations.

IV. Concerns that limit the role of defenders in addressing peace and security-related human rights violations

52. While there can be no doubt that the contribution of human rights defenders is fundamental to preserving peace and security, in many States defenders are confronted by severe limitations upon their capacity to conduct their human rights work and are very frequently themselves the victims of serious human rights violations. For instance, access to places, persons or information is essential to defenders in conducting their human rights work that could contribute towards restoring, strengthening or sustaining peace and security. Defenders have been prevented from speaking directly with witnesses and victims of violations through denial of access to places of detention or IDP camps and by a refusal to allow questioning to take place in private, or by intimidation of witnesses. From a perspective of preserving peace and security, the impact of these acts is such that defenders are prevented from fulfilling their role in support of human rights and that the many essential activities they conduct, as described above, are left undone or only partially done. The ultimate consequence is that peace and security worsen.

53. All of the defenders listed in this section who have suffered violations were working on issues that were of direct relevance to peace and security concerns raised by the Security Council or the Commission with regard to the country in which they were working. In a majority of cases they were trying to investigate and ensure justice for human rights violations that had already occurred. In some instances they were seeking resolution of land or environmental concerns that had, in the past, been among the causes of armed conflict. The violations against these defenders, only a very small sample of which are reported here, can only have harmed efforts to address those peace and security concerns.

54. In Nepal, since 1 February 2005, large numbers of human rights defenders are reported to have been arrested and subsequently detained under the Public Security Act, which allows the authorities to detain people for three months without charges for threats to "sovereignty, integrity or public tranquillity". On 8 February, Sukharam Maharjan, Vice-President of the Kirtipur Chapter of the Human Rights Organization of Nepal was arrested by persons identifying themselves as security personnel. In the next few days several human rights activists and members of Human Rights and Peace Society (HURPES), including Krishna Pahadi, the Chairperson, were arrested without warrants or charges. HURPES is a non-governmental and non-profit organization that carries out research and campaigning with a focus on non-violence, peace, human rights and democracy. Basu Devkota, General Secretary of the Human Development and Peace Campaign, and Rajesh Sharma, of the Human Rights Education Listeners Club, were also among those arrested and detained during this period. Their arrest and detention was reportedly arbitrary and related to their protests against human rights violations committed by security forces and State authorities.

55. On 8 June 2005, police in Kathmandu reportedly detained some 50 journalists who were protesting against restrictions on freedom of expression. Among those detained was Bishnu Nisthuri, the President of the Federation of Nepali Journalists. Bishnu Nisthuri had previously been arrested on 4 February 2005 following a statement issued by the Federation two days earlier condemning the measures taken by His Majesty King Guynendra, suppressing freedom of expression.

56. According to the information received by the Special Representative, in an apparent effort to reduce human rights monitoring in the rural districts of Nepal, the authorities prevented some human rights defenders from leaving Kathmandu. On 7 February 2005, Kapil Shrestha, a member of the National Human Rights Commission, was prevented from travelling to Biratnagar for the opening of a regional office of the Commission. On 26 February 2005, Subodh Pyakurel, Chairperson of the Informal Sector Service Center for Human Rights and Development (INSEC), Nepal's largest human rights NGO, was prevented from travelling to Nepalganj, where he was due to lead a human rights training course for security force personnel. On 4 March 2005, Commission member Sushil Pyakurel was turned back from Kathmandu airport when he attempted to lead a mission to investigate reports of vigilante violence against civilians in Kapilvastu.

57. The Maoist rebels have also targeted human rights defenders. Dekendra Raj Thapa, a journalist and member of HURPES, was killed in September 2004 and threats were also made against nine other journalists. The killing and threats were reportedly related to their human rights activities as members of HURPES and, in particular, because of their public condemnation of human rights violations committed by Maoists. Another journalist and representative of INSEC seeking information on the abduction of civilians by the Maoists was himself abducted in July 2004 and reportedly detained in a "labour camp" for several days. He is said to have received death threats even after his release.

58. In the Sudan, Waiel Taha and Yousif Fat'h Al Rahman, members of SOAT, were reportedly arrested in January 2004 during student demonstrations, held incommunicado and the latter, allegedly tortured before being released. Salih Mahmoud Osman, a member of a lawyers' network supporting SOAT, Osman Adam Abdel Mawla and Adib Abdel Rahman Yusuf, members of the Sudan Social

Development Organization, were reportedly arrested without charges in Khartoum and the Darfur region at different times between February and October 2004. Mudawi Ibrahim Adam, the Chairperson of the organization was arrested and detained once in 2004 and twice in 2005, without charges ever being pressed.

59. A number of national and international humanitarian NGO personnel have been detained in Darfur in connection with reports produced by their organizations on human rights abuses, including rape. The Special Representative also notes that there have been some reports of attacks by the rebel groups in Darfur against humanitarian workers and looting of humanitarian goods and transport.

60. In the Democratic Republic of the Congo, during December 2004 members of the African Association for Human Rights were threatened in e-mails and, in one case, warned of an imminent arrest. In June 2005, six human rights defenders were reportedly arrested, assaulted and detained by police in Lubumbashi while organizing a demonstration to demand that a fellow human rights defender be released. They included Timothée Mbuya, publications director at the Association, Hubert Tshiswaka, Executive Director of Action contre impunité pour les droits de l'homme, and Peter Kaodi and Emmanuel Impula of the same organization.

61. In Guatemala, in March 2004, Thelma Peláez, a judge with the Human Rights Section of the Ministerio Público, was followed by soldiers in plain clothes who threatened her because of her human rights investigations. In April 2004, staff of the NGO Donde están los niños?, specialized in investigating illegal adoptions and kidnapping of babies during the civil war, were forced at gunpoint to hand over materials on their cases to unidentified men who raided their office. In June 2004 Hugo Oswaldo Gutierrez Vanegas, President of the Comité Protierra de La Pita, an NGO working to address environmental and land rights concerns, was killed by unidentified persons. His murder was thought to be related to his work demanding protection of fertile land and the right of the La Pita community to use the land for its own subsistence. On 16 July 2004, the house of Edda Gaviola, who was working with the Centro para Acción Legal en Derechos Humanos, was raided and the following day witnesses of the Plan de Sánchez massacre received death threats, again from unknown persons. In October 2004, Luis Alberto López Batzin and other staff at the Procuraduria de Derechos Humanos of Coatepeque, Quetzaltenango, received death threats and were obliged to close their offices.

V. Conclusions and recommendations

62. **From the earlier sections of this report, it is clear to the Special Representative that the Security Council and the Commission on Human Rights have a consistent series of goals with respect to peace, security and human rights, and that human rights defenders play a major role in achieving these goals. It is also clear to her that when defenders suffer violations and are prevented from carrying out their human rights work, then the goals of the Council and the Commission are less likely to be attained.**

63. **In formulating her conclusions and recommendations, the Special Representative recalls again the Secretary-General report "In larger freedom ..." and particularly its emphasis on strengthening peace and security. The report calls for establishing a Peacebuilding Commission and for reform of the**

Commission on Human Rights into an institution that is better able to meet its human rights challenges. The Special Representative believes it to be essential that as Member States consider their response to the Secretary-General's report and his call for reform, they should be fully aware of the substantial role of human rights defenders in supporting peace and security.

64. **The Security Council and the Commission on Human Rights have both expressed strong interest in the development of early warning mechanisms to alert them to emerging peace, security and related human rights problems. The Special Representative considers that, as illustrated by some of the above examples, an effective early warning system already exists in the form of the work of human rights defenders. In the past, failure by the Security Council or the Commission on Human Rights to respond sufficiently early to the warnings given by human rights defenders has allowed peace and security and human rights situations to deteriorate to much more serious levels than might otherwise have been the case. It follows that both the Council and the Commission (or its successor) should ideally give greater consideration to receiving and reacting earlier to information from human rights defenders, largely reported to the Commission through its mechanisms, including the special procedures. The Special Representative also urges these bodies to recognize, protect and otherwise support the role of defenders in country situations under their consideration. Specifically, the Special Representative recommends:**

(a) **That human rights defenders be guaranteed timely and sufficient access to a reformed Commission on Human Rights (such as the Human Rights Council), including the possibility to present oral and written reports at moments that are most relevant for the issues being presented, and to have those reports given due consideration. Heightened access for defenders could be further facilitated by the Office of the High Commissioner for Human Rights;**

(b) **That the Office of the High Commissioner consider ways in which it can provide a rapid response to the reports of human rights defenders and through which defenders' work can be more effectively used as an early warning mechanism to alert the Security Council and the Commission on Human Rights;**

(c) **That in the context of their mandates on peace and security and human rights, the Security Council and the Commission recognize the grave implications of repression against human rights defenders for an overall country situation. In particular, it should be recognized that defenders suffering such repression would consequently be unable to report on the wider human rights problems in the country. Under such circumstances serious threats to human rights and peace and security are more likely to escape the notice of the Council and the Commission;**

(d) **That the Security Council and the Commission consider including references in their country resolutions that will address the protection of human rights defenders and guarantee their capacity to carry out their human rights work.**

65. **In many countries, including those represented by the examples in this report, civil society remains fragile and under strain. In order to integrate as a movement, NGOs require greater training opportunities and more resources, as well as support in developing strategies that will help them to form networks and to better coordinate their activities among themselves. Where civil society is weak, the Security Council and the Commission will not receive timely or comprehensive information on human rights concerns. In such contexts, United Nations agencies will not find adequate expertise among local implementing partners and their programme implementation will be weaker as a result. Further, the United Nations human rights treaty bodies and the various special procedures of the Commission depend to a very great extent on the information provided to them by human rights NGOs, and where civil society is weak this whole United Nations human rights framework is weakened as a result. The Special Representative recommends:**

(a) **That efforts by the Security Council and the Commission on Human Rights to prevent peace and security problems should include a focus on the capacity of civil society around the world and a commitment to creating the conditions and opportunities through which human rights civil society can be strengthened, in accordance with the rights and responsibilities defined under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;.**

(b) **That United Nations offices, departments and specialized agencies develop policies to ensure that through their interaction with their NGO implementing partners they support the capacity-building of these partners and of civil society in general, particularly the capacity to maintain their independence;**

(c) **That the Office of the High Commissioner consider ways through which it can strengthen the role and security of human rights defenders through its programmes, particularly through activities of its field offices where they exist. The Office must also consider the best means of supporting United Nations offices, departments and specialized agencies in this regard, especially in helping to create better contact and interaction between national human rights defenders and peacekeeping operations of the United Nations.**

66. **While the message of a responsibility to protect human rights defenders is implicit in the previous two paragraphs, the Special Representative wishes to draw attention to another aspect of her concerns. Over the course of five years as holder of her mandate, the Special Representative has been informed by human rights defenders of the difficulty they sometimes have in gaining access to United Nations personnel at the country level, and a disturbing lack of response to human rights concerns that they have encountered.**

67. **The Special Representative recognizes the complexities inherent in coordinating the work of the United Nations machinery and of integrating human rights across the whole of the United Nations system. She is also aware that a good deal of progress has been made in this regard in recent years. However, when a human rights defender herself at risk or having urgent information about very serious and widespread human rights violations in a**

country fails to get a response, it surely indicates that a great deal of progress remains to be made. The Special Representative can only express her deep regret at all such failures, recalling that respect for human rights goes to the core of the United Nations mandate. The United Nations bodies and personnel at the country level are the only direct contact that the vast majority of human rights defenders will ever have with the United Nations system. The Special Representative believes that it is incumbent upon the United Nations to ensure that this contact is one that is positive for the common interests of human rights. She therefore recommends:

(a) That United Nations offices, departments and specialized agencies give fuller consideration to the overall commitment of the United Nations to human rights in fulfilling their role and carrying out their activities at the country level. Special consideration must be given, in this regard, to human rights training for their country-based staff;

(b) That United Nations offices, departments and specialized agencies consider ways through which, within the limits of their mandates, they can support the work of human rights defenders who are their implementing partners and devise appropriate responses to protect them from harm, if the need arises;

(c) That United Nations offices, departments and specialized agencies consider ways in which they can react to those human rights concerns that fall within their mandates or take the responsibility to transmit urgent human rights information falling outside their mandates to other relevant United Nations entities;

(d) That the Office of the High Commissioner for Human Rights give consideration to ways in which it can encourage and support other United Nations bodies in achieving the above goals. For this purpose a clearer understanding and a greater acceptance by the wider United Nations system of the leading role of this Office in the area of human rights is essential;

(e) That, in the context of the ongoing reform process, Member States and the Office of the High Commissioner consider ways of further increasing capacity of the Office to respond to the protection needs of human rights defenders and to respond rapidly to the wider human rights issues being reported by defenders.

68. In her report to the next session of the Commission the Special Representative intends to focus on identifying progress made in the protection of defenders and implementation of the Declaration by measures taken in the countries from which she has received information in the past six years. The Special Representative hopes that this summary of progress made, and remaining to be made, will provide additional momentum for action in favour of human rights defenders, which would ultimately contribute directly to addressing the core peace, security and human rights objectives of the United Nations.